

Claims

As mentioned above, Claim 3 is withdrawn.

In addition, Claims 1 and 2 are amended to delete the words "low voltage" in the claims and simply make reference to this feature as DC electrical system on the farm and garden tractor, as those applying this device will understand that farm and garden tractors all include low voltage DC electric systems, and well as having that low voltage reference remain in the specification in the event the user is unaware that the tractor the device attaches to generally has a *low voltage* DC electrical system.

As to the argument that the authority cited by Applicant should allow the claims as newly amended to proceed to issue, and subsequent to the addition of a new art reference, Burenga '747, to negate the air compressor having certain features that are included in this device, which has as part of its material elements an air compressor, Applicant submits argument which should require a second review by the Examiner in this final office action.

First, the current device does indeed use an air compressor. Granted, the air compressor may indeed have a pressure gauge, a pressure regulator, a relief valve, control switches and other necessary fittings. However, this device is not attempting to patent an air compressor – it is utilizing an air compressor as part of an overall operating system. In addition to the air compressor, this device has *included on the air lines connected to the air compressor*, a check valve and a regulator, these items located between the air compressor and the foaming solution bottle. Regulators regulate air flow, as is known in the art and check valves prevent backflow through a line, whether air, liquid or other. These devices allow for regulation of air flow in the line and prevent any substance in the foaming solution bottle to the air compressors. As both Claims 1 and 2 include these claimed elements, and the manner and location they are claimed, this distinguishes this device from the two references of Cooke and Lloyd, even with the new addition of Burenga.

The foam header of the present invention is also distinct and was not addressed by the Examiner in either office action. Examiner merely states that Cooke's device has a header and an outlet chuck. Again, Cooke may have a "header" and an outlet chuck, but they do not exist as the same claimed material element.

Cooke has a control valve 30 that attaches to a non-return valve 32 (otherwise known as a check valve) which are attached to the exhaust system. This exhaust system could be construed as an air line, giving the Examiner the benefit of the doubt, although exhaust gasses being toxic, are not at all preferred to the compressed "air" of the current operating system. The "header" of Cooke also includes a down pipe 34 which directs the toxic exhaust to the bottom of a closed reservoir 8, which appears to serve a similar purpose as the foaming solution bottle of the present invention. However, Cooke is then through with the "header". Its outlet chuck is not connected to or incorporated into the header. It is a piece incorporated into the bottle, and is disclosed as an outlet 36 coming off the top of the reservoir 8 which is further connected to a three way valve 40 by hoses 38. Its three way valve lets the foaming agent out of the headspace above the detergent solution 9.

The present invention, as disclosed in the Claim 1 claims in lines 8-19 of page 11:

“...a foam header attached to each said air line, said foam headers having a inlet chuck receiving compressed air from said air line into a hollow central tube;

a foaming solution bottle attaching to each said foam header, said foaming solution having a bottom and containing a foaming solution, with said central tube from said foam header extending to said bottom of said foaming solution bottle when said foam header is attached to said foaming solution bottle, the compressed air passing through said foaming solution creating a foam within said foaming solution bottle within a headspace above said foaming solution;

an outlet chuck on each said foam header integrating with said headspace providing an outlet for said foam; ...”

Claim 2 further enhances Claim 1 and claims, in lines 10-19 of page 13 and lines 6-15 of page 14, the following:

“...a right foam header attached to said right air line, said right foam header having an inner threaded bottle engaging cap, an inlet chuck and an outlet chuck;

a foaming solution bottle having an upper threaded neck and a bottom, said upper threaded neck threadably attached to said bottle engaging cap, said foaming solution bottle containing a foaming solution with a headspace above said foaming solution within each foaming solution bottle, wherein said bottle engaging cap further includes a hollow central tube extending to said bottom of said foaming solution bottle, said central tube connecting to said inlet chuck by an inlet channel in said bottle engaging cap, with said outlet chuck connected to an outlet channel integrating with said headspace above said foaming solution;...” and

“...a left foam header attached to said left air line, said left foam header having an inner threaded bottle engaging cap, an inlet chuck and an outlet chuck;

a foaming solution bottle having an upper threaded neck and a bottom, said upper threaded neck threadably attached to said bottle engaging cap, said foaming solution bottle containing a foaming solution with a headspace above said foaming solution within each foaming solution bottle, wherein said bottle engaging cap further includes a hollow central tube extending to said bottom of said foaming solution bottle, said central tube connecting to said inlet chuck by an inlet channel in said bottle engaging cap, with said outlet chuck connected to an outlet channel integrating with said

headspace above said foaming solution;..."

These "headers" include the air inlets to the foaming solution bottle and the foam outlet for the foaming solution bottle in one integrated material element which simply screw onto a bottle. None of the parts of the header of the present invention are on the bottle, they are in the header.

Additionally, from the functional aspect, Cooke has a single foaming solution bottle and a right or left application of the foam is provided by the three-way switch. In order to operate Cooke, one must close off the control valve to keep the exhaust from entering the solution bottle **and/or** close off the three-way switch. This ceases the generation of foam.

In the present device, one uses the three way switch to control the flow of foam, either directing the right compressor to generate air to the right foam bottle and marking the right margin, directing the left compressor to generate air to the left foam marking bottle and marking the left margin, or turning the switch to where neither compressors are on, producing no air to either foam bottle and marking neither margin.

Neither Cooke or Lloyd have a bottle with a threaded neck engaging the inner threaded bottle engaging cap of the headers. One cannot disconnect the reservoir of Cooke by unscrewing it as in the present invention, because Cooke has a fill valve 56, 58, because refilling Cooke requires the disconnection of several connected items to the reservoir without this fill valve, unlike the present device, which simply requires unscrewing the header from an empty bottle and attaching a new full bottle of solution. This difference is clearly disclosed in the present invention and clearly distinguishes the present invention from all the prior art cited.

Restating previous authority, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *In Re Geiger*, 815 F.2d 686, 2 U.S.P.Q. 2d 1276 (C.A.F.C. 1987); *In*

Re Fine, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (C.A.F.C. 1988). Both the suggestion to make the claimed composition or device or carry out the claimed process and the reasonable expectation of success must be founded in the prior art. *In Re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (C.A.F.C. 1991). The art upon which the rejections are based do not fulfill this requirement and are clearly distinguishable.

There must be a suggestion or teaching that the claimed novel form of the prior art could or should be used. See, *In Re Cofer*, 354 F. 2d 664, 148 U.S.P.Q. 268 (C.C.P.A. 1966). There must be a “reasonable expectation of success” specified in the prior art usage in the current art. *Fritsch v. Lin*, 21 U.S.P.Q.2d 1739 (B.P.A.I. 1991). It is fundamental that claims are to be construed in the light of the specification and both are to be read with a view to ascertain the invention. *Transitron Electronic Corp. v. Hughes Aircraft Co.*, 487 F. Supp. 855, 205 USPQ 799 (1980, DC Mass.).

As to the particular vernacular of Claims 1 and 2 of the invention, the phraseology employed in the claims is the “guiding star” in the construction of the patent. *Super Products Corp. v. D P Way Corp.*, 546 F2d. 748, 756, 192 USPQ 417, 423-424 (1976, CA7 Wis.). Every term in claim 1 and 2 provides guidance as to the nature of the components claimed and their interrelationship. Those relative component relationships are not found in Cooke and Lloyd when combined. There is nothing wrong in defining something by what it does rather than by what it is. *ReEcherd*, 471 F2d. 632, 176 USPQ 321 (1973, CCPA); *Re Swinehart*, 439 F2d. 210, 169 USPQ 226 (1971, CCPA); *Re Fuetterer*, 319 F2d. 259, 138 USPQ 217 91963, CCPA). The present apparatus does what it does by using what components provide for it to do.

Finally, a reference which leads one of ordinary skill in the art away from the claimed invention can not render it unpatentably obvious. *Dow Chemical Co. v. American Cyanamid Co.*, 816 F.2d 617, 2 U.S.P.Q. 2d 1350 (C.A.F.C. 1987); *In Re Dow Chemical Co.*, 837 F.2d 469 5 U.S.P.Q.

2d 1529 (C.A.F.C. 1988). Cooke actually leads one away from the simplistic integrated component header of the present invention by including numerous elements that not only distinguish composition of the invention, but clear distinct function, which is covered in the claims and the specification upon which the claims are based.

As these arguments advanced by the Examiner were not made in the first office action, which was not final, Applicant respectfully requests more than the customary cursory review to address the new issues raised by the Examiner and reconsideration into withdrawal of the rejections to advance this application to allowance and issue, especially in light of the amendments made to Claims 1 and 2.